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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 623

FRED S. CALHOUN, *et al.*,

Petitioners,

—v.—

A. C. LATIMER, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' RESPONSE TO THE RESPONDENTS' MEMORANDUM OF FACTS

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Atlanta's Most Recent Plan of Desegregation

Atlanta's most recent school desegregation plan was adopted on April 8, 1964, after oral argument herein which took place March 31, 1964.

April 8, the Atlanta Board of Education adopted a resolution (Respondents' Memorandum, pp. 8-10) setting forth three criteria for assignment in September, 1964, of all students entering one grade, i.e., the 8th grade, which is the first year of high school. These criteria are: (1) choice of the pupil or his parents; (2) availability of facilities; and (3) proximity of the school to place of residence (Respondents' Memorandum, pp. 9-10).

The resolution further provides: ". . . where facilities are not available for all, priority shall be based on prox-

imity." This provision is further qualified: ". . . except that for justifiable educational reasons and in hardship cases other factors not related to race may be applied." In addition, so-called "Administrative assignments or reassignments may be made in cases of overcrowding, in hardship cases, and for disciplinary reasons." The resolution then states: "When such administrative assignments are made they shall be based on relative proximity and available facilities giving consideration to pupil choice where possible" (Respondents' Memorandum, p. 10).

The resolution next provides for students in grades 9, 10, 11, and 12. These are the grades already reached by the grade-a-year pupil assignment plan in operation since September of 1961. In these grades "transfers" are to be "freely granted" according to the three criteria set forth above. No "formal application" is required "other than the usual pre-registration required of all students." (There is no explanation of the pre-registration requirement.) There is no discussion of those not desiring to transfer; presumably they will remain where they are (Respondents' Memorandum, p. 10).

As to students who in September, 1964 will be in grades 8 through 12, the resolution provides for a freezing of assignments. This is effected by the following statement: "That where a student has exercised his choice of schools, either by initial assignment to the eighth grade or by transfer, as herein provided, further and additional transfers will be permitted only in hardship cases or for valid educational reasons unrelated to race" (Respondents' Memorandum, p. 10).

Students in grades 1 through 7, in September, 1964, remain completely segregated, because the grade-a-year plan will have reached only the 8th grade. In these grades, prior

to 1961, there were separate school zone lines for Negro and white elementary schools. "There has been no change in the elementary situation" (R. 61).

Prior to the Court of Appeals' opinion, as the Superintendent testified, students entering high school in Atlanta entered the high school "that had traditionally served that elementary school." This was known as the feeder system. Negro elementary schools would feed into Negro high schools. White elementary schools would feed into white high schools (R. 62-63). The majority of the Court of Appeals believed that the "main thrust or force" of Atlanta's grade-a-year pupil assignment plan would be "in the admission and assignment from elementary to high schools, and to the first grade" (R. 241). It conceived of the plan as superseding the feeder system in that:

> . . . for the school term beginning in September 1964, the plan will lay hold of the feeder system for the first time. This follows from the fact that such factors as are used for assignment and transfer must be used system wide in the assignment and transfer of seventh grade students to the eighth grade since they will be moving from one school to another, elementary to high school. This will remove even the residuum of the dual system from this grade and will rapidly dissipate it from the other high school grades as other succeeding elementary grades reach the eighth grade. (R. 241-242.)

As to the students already in grades 9-12, the majority approved the plan as amended in practice by respondents. This amendment was to apply the criteria of the plan only to Negro students seeking transfers to white schools. The Court of Appeals accepted this amendment of the plan to a transfer plan but required as to grades reached by the

plan that these criteria be applied to *all* transfers (R. 258). In addition, that Court required application of these criteria "to all assignments of pupils new to a school for admission in a desegregated grade in that school" (R. 258). From this flowed the emphasis on the 8th grade, the first year of the high school, and eventually the first grade.

The plan adopted April 8, 1964, which retains the original grade-a-year feature, will reach the first grade in 1971. Then all first grade students will be assigned pursuant to the three remaining criteria. Students in grades two to seven will have had a right to transfer pursuant to the three criteria, having been initially assigned pursuant to the separate zone lines. It will not be until 1977, when the 1971 second grade class reaches the eighth grade, that all pupils in the Atlanta system will have been initially assigned to schools pursuant to non-racial criteria.

The plan adopted April 8, 1964, requires all students who are now in the seventh through the twelfth grades in Atlanta's segregated schools to exercise a choice of schools. To this choice two principal criteria will be applied: availability of facilities and proximity of school to place of residence. The "availability" criterion reserves places in white schools for whites. Negroes can enter white schools if there is room or whites leave. Since this is unlikely, we have an automatic freeze. This points up the necessity for non-racial capacity-related school zones now throughout the entire system. Further, it is not clear whether the "proximity" criterion will permit Negro students who live closer to white schools than whites who are already in attendance to be given priority in assignment to the white school.

As to Negro children who do not elect to go to a white school, and white children who do not elect to go to a Negro

school, there will be no further desegregation in Atlanta, and Atlanta does not advise this Court of any steps it will take to disestablish the dual school system which it established and which remains in existence. Finally, respondents do not shed any more light on their chimerical "present administrative problems" which now prevent them from completely desegregating the Atlanta public school system.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this 22nd day of April, 1964, served a copy of Petitioners' Response to the Respondents' Memorandum of Facts on Attorneys for Respondents, A. C. Latimer, Esq., 1205 Healey Building, Atlanta, Georgia and Newell Edenfield, Esq., 310 Fulton Federal Building, Atlanta, Georgia, by mailing a true copy to each of them at the addresses above via United States mail, air mail special delivery, postage prepaid.

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Attorney for Petitioners